

330,2888

11/7/75

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

In the Matter of the Petition)
for Redetermination Under the)
Sales and Use Tax Law)

DECISION AND RECOMMENDATION
OF HEARING OFFICER

Account No. _____

Petitioner

The above-entitled matter came on regularly for hearing in Los Angeles, California on July 23, 1975, before W. E. Burkett, Hearing Officer.

Appearing for Taxpayer: _____

Appearing for the Board: _____

Messrs. Bystrom and Kozlovsky
Auditors

Protested Items
(Period 1/1/71 to 12/31/73)

- | | |
|---|-----------|
| 1. Lease payments made to _____ | \$ 82,845 |
| 2. Sales of reproduced data audited as sales of tangible personal property. | 201,575 |

Contentions of Taxpayer

1. The leases are either leases of real property or personalty for all purposes. It is improper to classify the leases as personalty and as realty on a continuing basis.
2. These amounts were paid for exempt services.

Summary of Petition

The taxpayer is a large integrated oil producing corporation.

The first protested item is made up of lease payments made by the taxpayer to _____ for the use of car washing fixtures installed in service stations operated by individual service station operators leasing facilities from the taxpayer.

The taxpayer collected and remitted use tax on the lease payments made by the individual service station operators. However, in the view of the staff, these leases of the car washing equipment amounted to leases of real property and do not operate to provide a basis for exemption of the lease from _____, to _____ sales for resale. The staff has indicated that credit would be given for these lease payments in the event they were refunded to the service station operators.

The taxpayer's lease agreements with _____ expressly provide that the leased property shall at all times remain personal property, and the lessor is given the right of removal of the property upon breach or termination of the particular lease agreement.

The underlying real estate is usually leased by the taxpayer from a third party. In a few instances the taxpayer may own the real property upon which the car washing equipment was placed.

The second protested item is made up of charges for tapes and charts containing seismic data obtained by the taxpayer from independent survey companies.

For an agreed consideration the taxpayer will grant the customer (usually another oil company) a nonexclusive right and license to use the data accumulated by the survey teams.

The actual data is usually transmitted on magnetic tapes and then transferred to cepia paper for interpretation and analysis by the customer's geophysicists or other skilled personnel. The transmission does not include any report or interpretation rendered by the taxpayer or the survey firm.

The taxpayer reasons that the transaction involves a transfer of raw data and not tangible personal property. An analogy was drawn to a 1928 _____ transaction involving an assignment of a processing technique.

Analysis and Conclusions

It is our considered conclusion that the taxpayer's lease to the service station operators must be classified as leases of tangible personal property.

We have looked beyond the apparent permanence of the installations as indicated by the manner of affixation and the intended use of the property and classified the taxpayer's lease of the property from _____ as leases of tangible personal property. This is an authorized classification in accordance

with the District Court of Appeal's holding in Standard Oil Company v. State Board of Equalization, 232 Cal.App.2d 91. However, the determination is a continuing one which must receive on-going effect by reason of the continuing sale character of the lease transactions.

It is a well recognized axiom of tax law that a single transaction cannot be broken down into separate parts by either the taxing agency or the taxpayer (see Roeding Securities Inc. v. U.S., 176 Fed.Supp. 844; Kinney v. U. S., 358 Fed.2d 738).

Accordingly, it would not appear that we are authorized to utilize a particular provision of a lease contract to perfect a classification and then deny the taxpayer the benefit of the same provision where the contract is in full force and effect.

The taxpayer's agreements with the service station operators were mere subleases of the property. The provisions of a sublease are subservient to the provisions of the original lease and must defer to the original if its terms are conflicting (Julian v. Schwartz, 16 Cal.App.2d 310). It is merely a transfer of a portion of the lessee's term under the original lease with the right of reversion to the original lessee (Williams v. Hinkley, 109 Cal.App. 574). The sublessee is charged with notice of the existence of the original lease and is bound by all of its terms and provisions (Baranov v. Scudder, 177 Cal. 458; Scott v. Mullin, 211 Cal.App.2d 51).

It is thus apparent that the subleases were not independent leases of the property, but were merely extensions and transfers to third parties of a portion of the lease terms. Since the sublessees were subject to all of the terms and conditions of the original lease and were not truly separate lease transactions, the taxpayer is entitled to the continuing classification of the property as personalty.

We conclude that the purchases of reproduced seismic data were properly classified as sales of tangible personal property (Revenue and Taxation Code section 6006(g); also see Sales and Use Taxes Regulations 1501 and 1502).

While the taxpayer undoubtedly desired to obtain the tapes and/or cepia paper for the purpose of utilizing the data contained thereon, it did not contract with the taxpayer to produce this data as an end item per se. Thus the nature of the contract is one for the rental of reproduced printed material or material reproduced on magnetic tapes. Accordingly, the true object of the contract is for the acquisition of reproduced property, and not for services per se. It follows that the contract was properly

classified as one for the transfer of tangible personal property (see Albers v. State Board of Equalization, 237 Cal.App.2d 494; People v. Grazier, 135 Cal.App.2d 274).

It is of no consequence that the particular material required interpretation by the customer's staff in order to be of value.

Recommendation

A reaudit should be conducted deleting the lease payments made to _____ from the measure of tax proposed for redetermination. Reaudit adjustment to be initiated by: _____.

W. E. Burkett
W. E. Burkett, Hearing Officer
JEB 11-24-75

11-7-75
Date

Reviewed for Audit:

Principal Tax Auditor

Date